IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2494 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VN SOLANKI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR DP VORA for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the impugned order dated 19-3-1996 passed

by the respondent No.4, Executive Engineer, Ahmedabad city, R & B Division, Ahmedabad directing the petitioner to pay an amount of Rs.57,200/- being the rent at the rate of Rs.800 per month for the period between 15-3-1990 to 29-2-1996 being in unauthorized occupation of the respondent accommodation allotted to the petitioner while he was at Ahmedabad.

2. The petitioner was serving as an Asst. Professor and while he was at Ahmedabad, he was allotted quarter bearing No.39/4, “L” Colony and was in possession of the said quarter. It appears that the petitioner was transferred from Ahmedabad to Morbi by an order dated 15-1-1990 and as per the Government circular dated 22-10-1982, a Government employee occupying Government quarter, was required to vacate the quarter within two months from the date of transfer and after the period of two months from the date of transfer, the occupation of the transferred employee becomes unauthorized and is required to pay the amount at the market rate and as the petitioner did not vacate the quarter, though was transferred in 1990 and continue to occupy the same after two months from his transfer, the impugned order came to be passed directing the petitioner to pay the market rent

at the rate of Rs.800/- per month for the period between 15-3-1990 to 29-2-1996 for the unauthorized occupation of the Government quarter on the transfer of the petitioner. Being aggrieved by the same, the petitioner has preferred the present Special Civil Application.

3. Shri DP Vora, learned advocate appearing on behalf of the petitioner has submitted that the petitioner continued to be in occupation of the quarter pursuant to the interim order passed by the Hon'ble Supreme Court granting order of status quo and therefore, the petitioner cannot be said to be in unauthorized occupation of the Government quarter and therefore, the impugned order requires to be quashed and set aside. It is submitted that while the petitioner was in occupation of the said quarter, the Government issued a resolution dated 18th November 1975, subsequently modified by another resolution dated 10th March 1980 setting out a scheme for disposing of a quarter of “H” and “L” colony on the basis of the guidelines laid down in the said Government resolution and the petitioner applied for the benefit of the said scheme which was denied to the petitioner and therefore, the petitioner preferred Special Civil Application No.980 of 1980 along with other petitioners

and by order dated 14-4-1980, this Court granted order of status quo and the said order of status quo was continued to final disposal i.e. 7-11-1987 and the petitioner continued to be in possession of the said residential quarter. It is also further submitted that the matter was taken to the Hon'ble Supreme Court by the State of Gujarat by filing Civil Appeal No.1527-28 of 1988, wherein the Hon'ble Supreme Court also granted order of status quo. It is submitted that during the pendency of the aforesaid, the petitioner was transferred to Morbi. However, in view of the order of status quo granted by the Hon'ble Supreme Court, the petitioner continued to be in possession and therefore, the impugned order is absolutely illegal and most arbitrary. It is submitted that at no point of time, the petitioner's occupation of the quarter was unauthorized or irregular.

4. Petition is opposed by the learned AGP Ms Maithili Mehta. An affidavit-in-reply is filed on behalf of the respondents. It is submitted that petitioner was transferred to Morbi vide order dated 15-1-1990 and petitioner was required to vacate the same within two months and as the petitioner did not vacate the same, the petitioner was in unauthorized occupation of the quarter

after completion of two months and therefore, was liable to pay the market rent at the rate of Rs.800/- per month. It is also submitted that on one hand, the petitioner continued to be in occupation of the Government quarter at “L” colony by paying rent of Rs.50/- only, he has availed Rs.500/- per month as HRA while serving at Morbi. It is submitted that on one hand, he has unauthorizedly occupied the Government quarter and on the other hand, has illegally availed the benefit of HRA while serving at Morbi. It is also further submitted that as the petitioner was again transferred to Ahmedabad from Morbi on 21-12-1995, he made request to the Principal of L.D. Engineering College, Ahmedabad to make necessary arrangement to deduct appropriate amount directly from his salary for the quarter, so that he may not be required to pay the same by separate chalan and rent of “L” colony is fixed for Rs.89/- while College has deducted only Rs.50/-. She has submitted that even on re-transfer, he was required to make application directly for accommodation to the respondent No.2 and cannot directly take possession of any quarter suitable to him and pay the minimum prescribed rent. Thus, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the petitioner came to be transferred to Morbi vide order dated 15-1-1990. As per the Government resolution dated 22-10-1982, a Government employee occupying Government quarter, was required to vacate the quarter within two months from the date of transfer and after the period of two months from the date of transfer, the occupation of the transferred employee becomes unauthorized and is required to pay the amount at the market rate. The petitioner did not vacate the quarter at “L” colony, Ahmedabad within two months and continue to occupy the same though he was transferred to Morbi. Thus, after completion of two months from 15-1-1990 i.e. on and after 15th March 1990, he was in unauthorized occupation of the Government quarter. It is also required to be noted at this stage that the petitioner did not inform the department regarding any order of status quo. It is also required to be noted that the petitioner availed Rs.500/- per month as HRA while serving at Morbi. The rent which was paid while occupying the Government quarter at Ahmedabad unauthorizedly, was Rs.89 per month. Against which he availed HRA of

Rs.500/-. Thus, on one hand, the petitioner has unauthorizedly occupied the Government quarter and on the other hand has illegally availed the benefit of HRA while serving at Morbi. It is also required to be noted that the petitioner was again transferred to Ahmedabad on 21-12-1995 and for the purpose of accommodation at Ahmedabad on re-transfer to Ahmedabad, he was required to make application directly to the respondent No.2 i.e. Controller of Accommodation and instead of that, he straightway made a request to the Principal, L.D. Engineering College, Ahmedabad to make necessary arrangement to deduct appropriate amount directly from his salary for the quarter so that he may not be required to pay the same by separate chalan. It is also required to be noted that rent of “L” colony was Rs.89/- per month while the College deducted Rs.50/- per month. Thus, even after 1995 also, prescribed rent was not deducted from the salary of the petitioner. On re-transfer, if the application would have been made to the competent authority i.e. respondent No.2 for allotment of quarter, then it might be that on re-transfer, petitioner might have been allotted some another Government quarter but instead of that he did not make any application to the competent authority and continue to occupy the quarter

which was unauthorizedly occupied by him when he was transferred to Morbi. Thus, considering the above and the Government resolutions dated 8-6-1998 and 18-6-1998 and considering the period after completion of two months from 15-1-1990, the occupation of the petitioner is considered to be unauthorized and the petitioner is directed to pay the market rent for the aforesaid period, it cannot be said that there is any illegality committed by the respondents and/or the impugned order is arbitrary and/or dehors the rules and/or the resolution.

7. So far as the contention on behalf of the petitioner that the petitioner continued to be in possession of the quarter pursuant to the order of status quo granted by this Court as well as the Hon'ble Supreme Court is concerned, it is required to be noted that the same might be applicable if the petitioner continued to occupy the same while serving at Ahmedabad and had not availed any HRA. In the present case, the petitioner was transferred to Morbi, he continued to occupy the Government quarter two months after the transfer and not only that he has availed HRA of Rs.500/- illegally though occupied the Government quarter at Ahmedabad on an economic rent (Rs.89/- per month). Therefore, the petitioner cannot be

permitted to contend that his occupation in Ahmedabad is not unauthorized though he has availed the benefit of HRA of Rs.500/- while serving at Morbi. Under the circumstances, the aforesaid contention of the petitioner also cannot be accepted.

8. For the reasons as stated above, there is no substance in the present Special Civil Application and is required to be dismissed and is accordingly dismissed. Rule discharged. Interim relief if any stands vacated forthwith. No costs.

(M.R.SHAH,J.)

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